

# ARKANSAS SUPREME COURT

No. 06-334

NOT DESIGNATED FOR PUBLICATION

RICHARD WILLIAMS  
Appellant

v.

LARRY NORRIS, DIRECTOR, ARKANSAS  
DEPARTMENT OF CORRECTION  
Appellee

Opinion Delivered

May 25, 2006

*PRO SE* MOTION FOR EXTENSION OF TIME  
TO FILE BRIEF [CIRCUIT COURT OF  
JEFFERSON COUNTY, CV 2005-893-5, HON.  
ROBERT HOLDEN WYATT, JR., JUDGE]

APPEAL DISMISSED; MOTION MOOT

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## PER CURIAM

In 1998, appellant Richard Williams entered a plea of guilty to three counts of rape and one count of kidnapping in Pope County Circuit Court. The trial court sentenced appellant to 372 months' incarceration on each rape charge and 120 months' incarceration for kidnapping, with all sentences to be served concurrently. The court also suspended imposition of an additional sentence of nine years' incarceration on the kidnapping charges. Appellant did not appeal the sentences imposed.

In November, 2005, appellant, who is incarcerated in the Arkansas Department of Correction, filed in Jefferson County Circuit Court a *pro se* petition for writ of *habeas corpus*. Therein, appellant argued that the sentences imposed for the rape charges were illegal and sought to modify the sentence. The petition for writ of *habeas corpus* was denied with prejudice. Subsequently, appellant filed an amended petition for writ of *habeas corpus*, and thereafter a petition for reconsideration and a second amended petition for writ of *habeas corpus*. Both amended petitions and the petition for reconsideration were denied. Appellant, proceeding *pro se*, has lodged this appeal of the order denying the petition.

Now before this court is appellant's motion for extension of time to file his brief in the instant matter. We need not consider the motion as it is apparent that appellant could not prevail in

this appeal if it were permitted to go forward because he failed to demonstrate a legitimate basis for the writ. Accordingly, we dismiss the appeal and hold the motion moot. This court has consistently held that an appeal from an order that denied a petition for writ of *habeas corpus* will not be permitted to go forward where it is clear that the appellant could not prevail. *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (*per curiam*); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (*per curiam*).

A writ of *habeas corpus* is proper when a judgment of conviction is invalid on its face or when a circuit court lacked jurisdiction over the cause. *Davis v. Reed*, 316 Ark. 575, 577, 873 S.W.2d 524, 525 (1994). Unless a petitioner can show that the trial court lacked jurisdiction or that the commitment was invalid on its face, there is no basis for a finding that a writ of *habeas corpus* should issue. *Friend v. Norris*, \_\_\_ Ark. \_\_\_, \_\_\_ S.W.3d \_\_\_ (December 1, 2005) (*per curiam*); *Birchett v. State*, 303 Ark. 220, 795 S.W.2d 53 (1990) (*per curiam*). The petitioner must plead either the facial invalidity or the lack of jurisdiction and make a “showing, by affidavit or other evidence, [of] probable cause to believe” he is illegally detained. Ark. Code Ann. 16-112-103 (1987). *See Wallace v. Willock*, 301 Ark. 69, 781 S.W.2d 478 (1989); *see also Mackey v. Lockhart*, 307 Ark. 321, 819 S.W.2d 702 (1991).

We treat allegations of void or illegal sentences similar to the way that we treat problems of subject-matter jurisdiction. *Taylor v. State*, 354 Ark. 450, 125 S.W.3d 174 (2003). Detention for an illegal period of time is precisely what a writ of *habeas corpus* is designed to correct. *Id.* at 455, 125 S.W.3d at 178. However, a *habeas corpus* proceeding does not afford a prisoner an opportunity to retry his case and is not a substitute for direct appeal or a timely petition for postconviction relief. *Meny v. Norris*, 340 Ark. 418, 420, 13 S.W.3d 143, 144 (2000) (*per curiam*).

Appellant argued in his original petition that the trial judge who sentenced him improperly departed upward from the presumptive sentence set forth in the sentencing grid, and the resulting sentences imposed for rape were illegal. In his amended petitions, appellant additionally claimed that he entered into a contractual agreement with the sentencing court and the State of Arkansas as

to the sentences to be imposed. Appellant maintained that the actual sentences received for the rape charges breached the contract. In support of his claims, in the amended petitions, appellant attached transcripts of the hearings wherein appellant entered his guilty plea and later was sentenced.

In *Wallace, supra*, the petitioner contended that she had not entered a plea of guilty to one of the charges that appeared on the judgment of conviction. We held that a petition for writ of *habeas corpus* was not available to question the validity of a conviction where a plea of guilty was accepted in a court which had jurisdiction.

In this appeal, appellant attempts to argue facts that are not on the face of the judgment in support of his position. Appellant refers to events occurring at his plea hearing and at his sentencing. Our review is limited to whether the court had jurisdiction, as it did in *Wallace* and as it did in appellant's case, and to whether the judgment is invalid on its face. In the case at hand, the type of issue raised by appellant is precisely that which should be limited to relief pursuant to a timely petition for postconviction relief under Ark. R. Crim. P. 37.1.

As appellant has failed to show the judgment of conviction was invalid on its face or that the circuit court lacked jurisdiction, the circuit court appropriately determined the writ should not issue.

Appeal dismissed; motion moot.